

February 3, 2023

VIA EPA'S FOIA ONLINE REQUEST PORTAL

National FOIA Office, Office of General Counsel, US
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Mail Code 2310A
Washington, DC 20460

Re: FOIA Request – Bluestone Coke, LLC

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 40 C.F.R. §§ 2.100-2.108, the Southern Environmental Law Center (“SELC”) respectfully requests copies of the following documents in the possession or control of the Environmental Protection Agency (“EPA”), regarding the site that is now owned by Bluestone Coke, LLC (formerly owned by Sloss Industries Coke Plant, Walter Coke, or ERP Compliant Coke) located at 3500 35th Avenue North, Birmingham, AL 35207 (the “Site”).

These documents are to include, but are not limited to:

- 1) All documents related to groundwater investigations at the Site in response to RCRA corrective action requirements;
- 2) All documents related to surface water/sediment investigations at the Site in response to RCRA corrective action requirements;
- 3) All documents related to any investigations conducted to assess potential intrusion of subsurface organic vapors into buildings at the Site;
- 4) All communications and correspondence with any owners/operators of the Site regarding RCRA corrective actions;
- 5) Any environmental, economic, and all other investigations, reports, studies and/or draft studies concerning RCRA actions at the Site.

Because releasing these records is in the public interest, we request a fee waiver for costs associated with conducting this search.

For the purposes of this request, the term “documents” includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of EPA. Please provide any electronic records in native file format.

In addition, we request access to each and every version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc.

Please also include all responsive records generated up to the date of the agency's search for records responsive to this request.

FOIA directs a responding agency to make a "determination" on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A); 40 C.F.R. § 2.104(a). Pursuant to 40 C.F.R. § 2.104(i), in addition to making responsive documents available for request, should you determine that certain documents are responsive to this request and choose not to produce them on the basis of any claimed privilege or exemption from disclosure, we request that you produce a detailed list of those documents, including: the date of the document; the authors and recipients; the subject matter of the document; and the basis for the claimed privilege or exemption for disclosure. Further, where a document contains specific information that you claim is exempt or privileged, we request that you simply redact the information so claimed and produce the document in redacted form. The redacted information should be included in the list of privileged or exempt information just described.

The disclosure of the requested records would be in the public interest because it is likely to contribute significantly to public understanding of EPA's activities in relation to the Site in Jefferson County and EPA's investigations and reviews of the Site. SELC is a 501(c)(3) non-profit organization working to protect the natural resources of the Southeast and, in particular, to gather, analyze, and disseminate public information about matters of conservation and environmental protection. As part of its work, SELC has been actively engaged in protecting the environment of the Southeast for three decades. SELC has been actively engaged in monitoring and participating in projects which may impact water and air quality and other natural areas, with the goal of preserving the natural places of the Southeast for future generations. The Site may directly impede the ability of current and future generations to enjoy this natural area. SELC may disseminate the information gathered through this request to the general public through press releases, social media, public comment letters, and its website, southernenvironment.org, which is updated regularly. Pursuant to 40 C.F.R. § 2.104(f)(3), we certify that these statements are true and correct to the best of our knowledge and belief.

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver is appropriate because disclosure of this information is in the public interest and SELC does not have a commercial interest that would be furthered by the requested disclosure. SELC is a 501(c)(3) non-profit organization that provides legal representation to other 501(c)(3) non-profits and public advocacy free of charge. Our intended use of the requested materials is to glean a greater understanding of EPA's plans for the Site and to continue to disseminate information about federal conservation policy to the public through the many channels described above. All of the activities described above have been, and will continue to be, provided to the public by SELC and our clients for no payment. Courts have recognized that Congress intended FOIA's fee waiver to be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before

processing this request to discuss fees. We reserve our right to appeal a denial of our request for a fee waiver or reduction.

Thank you for your prompt attention to this matter. In the event you deny our request, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available.

Please contact me at (205) 745-3060 or sstokes@selcal.org and mgolski@selcal.org to arrange for inspection, copying, and electronic transmission of the requested documents.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Stokes".

Sarah Stokes
Senior Attorney